

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Selection and Appointment

Make-up Examinations

Additions to Eligible Lists

Certain Persons Returning from Military Service

Proposed New Rule: N.J.A.C. 4A:4-4.6A

Proposed Amendments: N.J.A.C. 4A:4-2.9, 2.17, 3.6, 6.1 and 6.2

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:4-1 et seq.; and P.L. 2008, c. 29 and P.L. 2012, c. 49.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-048.

A **public hearing** concerning the proposed amendments and new rule will be held on:

Wednesday, April 10, 2013 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by May 17, 2013 to:

Henry Maurer, Director

Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, NJ 08625-0312

Summary

P.L. 2012, c. 49, enacted on September 19, 2012 and effective 30 days thereafter, addresses situations in which a reservist or a national guard member whose name had been placed on an open competitive eligible list returns from Federal active duty after the list has expired. The remedy provided in the legislation is to give such individuals the opportunity to request, within one year of the list's expiration, placement on an active eligible list for the same title and jurisdiction, utilizing the score he or she had earned for the expired list. Placement on the list is for prospective appointment only. The legislation further provides that if the two lists do not result from the same test mode, the Civil Service Commission shall reconcile the two test modes "in the best interest of the applicant." The applicant is not required to pay the application processing fee but must still complete an application and meet the announced eligibility requirements for the test that resulted in the active list. The applicant has the opportunity to request placement on a second active list if the first active list expires less than 12 months following his or her application filing; no application fee may be charged here, either.

Proposed new N.J.A.C. 4A:4-4.6A, Certain persons returning from military service, would codify the substance of the law just described. Subsection (a) would permit a member of the New Jersey National Guard or reserve component of the U.S. Armed Forces who is on an open competitive eligible list but is called to active Federal duty before the list's expiration, and does not return from duty until after the list expires, to apply for placement on an active list within 12 months of the list's expiration. Proposed subparagraphs (a)1i, ii, and iii would set forth the criteria that an individual must meet in order to be considered for placement on an

active list. Proposed paragraph (a)2 would exempt the individual from having to pay the examination processing fee set forth in N.J.A.C. 4A:4-2.17. Proposed paragraph (a)3 would provide that an applicant who fails to meet the eligibility criteria enumerated in proposed paragraph (a)1 shall be disqualified from placement on an active list. Proposed paragraph (a)3 would also include a cross-reference to N.J.A.C. 4A:4-6.2 and 6.3 for actions against disqualified persons.

Proposed N.J.A.C. 4A:4-4.6A(b) would state that the active list shall be for the same title and jurisdiction and result from the same test mode as the expired list. However, proposed paragraph (b)1 would set forth the exception that, in the case of entry-level law enforcement testing, the local jurisdiction need not be the same because such testing is announced on a Statewide basis and results in a single pool from which certifications are issued. Proposed paragraph (b)1 would also provide a cross-reference to proposed subsection (d) regarding procedures to follow where the test mode is not the same.

Proposed N.J.A.C. 4A:4-4.6A(c) would set forth the method by which an applicant who meets the criteria in subsection (a) will have his or her name placed on the active list. Proposed paragraph (c)1 would require that the applicant retain the final average earned on the test resulting in the expired list, except as provided in the proposed subsections (d) and (e). Proposed paragraph (c)2 would require that the applicant's name be placed on the active list for prospective appointment only, immediately following disabled veterans and veterans. However, proposed subparagraph (c)2i would require that the applicant's name be placed among the disabled veterans or veterans, as appropriate, if he or she establishes veterans preference prior to promulgation of the active list.

Proposed N.J.A.C. 4A:4-4.6A(d) would provide that, if the active list did not result from the same test mode, a reconciliation of the test mode for the expired list and the active list is required, in the best interest of the applicant. Proposed paragraph (d)1 would set forth five broad categories of competitive testing, with any two different categories requiring reconciliation. In accordance with proposed paragraph (d)2, reconciliation would involve a make-up examination for the applicant utilizing the test mode that resulted in the active list. Proposed subparagraph (d)2i would require that the applicant's final average on the make-up apply to the active list, with his or her name being added to the active list in accordance with paragraph (c)2. If the applicant fails the make-up, proposed subparagraph (d)2ii would state that the applicant's name will not be placed on the active list and the applicant will not have a further opportunity for placement on the active list.

Significantly, proposed N.J.A.C. 4A:4-4.6A(e) would state that, if both tests are unassembled, the applicant would still have to take a make-up, as it would be in the best interest of the applicant to be rated on a later application presumably showing more relevant experience than an earlier one showing less relevant experience. Proposed new paragraph (e)1 would state that, where the unassembled examination method for both tests is ranked, the higher of the two final averages will apply to the active list, but if both tests were administered as unranked unassembled examinations, the applicant will receive the same score as all other eligibles on the list. Proposed paragraph (e)3 would require the addition of the applicant's name to the active list in accordance with proposed paragraph (c)2, already described above.

N.J.A.C. 4A:4-4.6A(f) would permit an applicant to request the placement of his or her name on a maximum of two active open competitive lists, subject to the preceding subsections and to the requirements set forth in paragraphs (f)1, 2, and 3. Paragraph (f)1 would provide that,

if the first active list on which the individual's name is placed expires in less than 12 months following the filing of his or her application under the proposed new rule, the applicant is entitled to be placed on a second active list, upon requesting this in writing, so long as placement on this second list can be done within 12 months following the applicant's initial filing for placement on an active list under the rule. Paragraph (f)2 would prohibit an application processing fee from being charged the applicant in the case of a second active list. Paragraph (f)3 would provide that, if the applicant's name cannot be placed on a second active list within the 12-month period required in paragraph (f)1, his or her name will not be placed on a second active list.

Existing civil service rules are also proposed for amendment in accordance with P.L. 2012, c. 49. N.J.A.C. 4A:4-2.9, Make-up examinations, would be amended at subsection (a), which currently sets forth permissible reasons for applicants to take a make-up, other than for make-ups of professional level engineering promotional examinations and public safety open competitive and promotional examinations. New paragraph (a)6 would be added, so that certain persons returning from military service, as set forth in N.J.A.C. 4A:4-4.6A, would be permitted to take a make-up. Existing paragraph (a)6, which permits "other valid reasons" for allowing a make-up, would be recodified as paragraph (a)7, without change. Subsection (b) pertains to professional engineering promotional make-ups. New paragraph (b)4 would permit a make-up for this type of promotional examination for certain persons returning from military service, as set forth in N.J.A.C. 4A:4-4.6A. Existing paragraph (b)4, which permits make-ups under subsection (b) in the case of error by the former Department of Personnel (now Civil Service Commission) or appointing authority would be recodified as paragraph (b)5, without substantive change.

N.J.A.C. 4A:4-2.9(c), which concerns make-ups for public safety open competitive and promotional tests, would be amended to include new paragraph (c)3, which, like the proposed changes to subsections (a) and (b), would provide for make-ups for those individuals returning from military service as set forth in the proposed new N.J.A.C. 4A:4-4.6A. Existing paragraph (c)3, which permits make-ups for public safety candidates in the case of a catastrophic health condition or injury, would be recodified as paragraph (c)4, without change.

N.J.A.C. 4A:4-2.9(d), which concerns make-ups for employees returning from military leave, gives such employees an opportunity to either take a promotional test that has not yet been administered or to take a promotional test that had been administered while an employee was on leave, and to be placed on a promotional list for prospective appointment only. Subsection (d) would be amended to exempt those individuals subject to the proposed new N.J.A.C. 4A:4-4.6A from the provisions of this subsection. N.J.A.C. 4A:4-2.9(f) currently sets forth procedures for requesting a make-up. This subsection is proposed for amendment to exempt candidates who are subject to the procedures set forth in N.J.A.C. 4A:4-4.6A. Existing N.J.A.C. 4A:4-2.9(j) provides that a make-up will not be held where the test requires a multiple assessment of a candidate resulting in a group consensus rating by a panel of experts, except in cases of documented error on the part of the former Department of Personnel (now Civil Service Commission) or appointing authority, in which case a make-up will be granted if practicable. This subsection is proposed for amendment to add a further exemption to these limitations in the case of certain persons returning from military leave who fall under proposed new N.J.A.C. 4A:4-4.6A.

N.J.A.C. 4A:4-2.17, Application processing fees, would be amended to include new paragraph (a)4, exempting those individuals applying for placement on a list under proposed new

N.J.A.C. 4A:4-4.6A from having to pay an application processing fee. N.J.A.C. 4A:4-3.6, Additions to eligible lists, would be amended to include new paragraph (a)5 to permit the adding of a name to a list in accordance with proposed new N.J.A.C. 4A:4-4.6A.

N.J.A.C. 4A:4-6.1, Examination and selection disqualification, would be amended to include new subsection (d) to cross-reference proposed new N.J.A.C. 4A:4-4.6A with regard to disqualifications under that section. Similarly, N.J.A.C. 4A:4-6.2, Actions against disqualified persons, would be amended to include new subsection (b) to cross-reference proposed new N.J.A.C. 4A:4-4.6A with regard to disqualifications under that section.

Finally, in accordance with P.L. 2008, c. 29, the above existing rules would also be amended to change mentions of “Department of Personnel” and “Commissioner of Personnel” to “Civil Service Commission,” “Chairperson of the Civil Service Commission or designee,” or “appropriate representative of the Civil Service Commission,” as applicable. Specifically, the following rule provisions would be so amended: N.J.A.C. 4A:4-2.9(a)1, recodified (b)5, (c)2, (h), and (j); 3.6(a), (a)2, and (b); and 6.1(a)3.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Affording individuals who return from Federal active duty in the New Jersey National Guard or a reserve component of the United States Armed Forces the opportunity to be placed on an open competitive eligible list, where the list they had been on expired during their leave, would have many positive implications. First, these individuals, who have conscientiously served their country, would not be penalized by essentially forcing them to apply for a new test

announcement when they could be placed on an active list. State and local appointing authorities would benefit from being able to consider these individuals for appointment if they are reachable.

However, the Civil Service Commission cautions that if the term “reconciliation,” as utilized in P.L. 2012, c. 49, would involve transferring a candidate’s score to a second test or reconstructing a candidate’s score on a second test based on the score the candidate earned on the first test, where the two tests differ in content or utilize different test modes, such a process would be problematic. Standards of Educational and Psychological Testing, a publication which sets forth testing guidelines developed jointly by the American Education Research Association, the American Psychological Association, and the National Council of Measurement in Education, states that there are several difficulties in attempting to equate scores. Regardless of the statistical procedures used, scores from different test formats cannot be used interchangeably. Score conversions can be useful in demonstrating similarity of test constructs but are otherwise subject to misinterpretation. Finally, when changes in test specifications occur, the scores are not directly comparable. Accordingly, there is no ideal way to reconcile test formats. The Commission also notes that N.J.S.A. 11A:4-1a requires examinations “which shall test fairly the knowledge, skills and abilities required to satisfactorily perform the duties of a title or group of titles.” Therefore, the Commission intends, with the proposed amendments and new rule, to balance the foregoing statutorily mandated psychometric principles with the requirements of the recently enacted law and the best interests of the applicants who would benefit from the law.

Although the reconciliation process that the Commission proposes would involve make-up examinations in certain instances, the applicants would be exempt from normal make-up procedures and requirements, thereby giving them an easier, faster process with which to

comply. A positive social impact would also result from applicants having two opportunities, subject to certain limitations, to be placed on an active open competitive eligible list within 12 months of applying.

In the case of two unassembled examinations that result in ranked lists, the education, training, and/or experience specified by the applicant on the new application would be evaluated based on the announced closing date for the active list. The Commission notes that the passage of time during Federal active duty may lengthen an individual's relevant experience in certain circumstances. In any case, the better of the two scores would be used in placing the applicant on the active list.

Economic Impact

A positive economic impact is anticipated as a result of the proposed new rule and amendments. Individuals subject to P.L. 2012, c. 49, who are found eligible for placement on an active list, would have the opportunity to be considered for employment for the life of that list. Under current Civil Service Commission rules, an individual returning from service whose name had been on a list that expired during the individual's service but who hopes to be considered for civil service employment normally has to wait for the satisfaction of several conditions before he or she can be considered for further employment opportunities. Thus, the individual has to wait for a new test to be announced, apply for it by a new filing date, wait for the test to be scheduled, and then take the test (unless it is unassembled), and wait for it to be scored and for a list to be promulgated, and wait some more while the list is certified and the appointing authority makes one or more selections from the list by the disposition due date. During all of this time, an individual falling under the new law could have been considered for employment and even

commenced new employment rather than wait for the normal Civil Service Commission selection process to run its course.

Additionally, individuals subject to P.L. 2012, c. 49, would be exempted from having to pay an application processing fee for both the first active list for which he or she applies and then, if permitted under the new law, the second active list for which the individual applies. Such an exemption would obviously be to the economic benefit of the applicant.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule and amendments govern placement of certain applicants on civil service open competitive eligible lists and are not subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that any jobs would be generated or lost if the proposed new rule and amendments were adopted. The proposed new rule and amendments govern placement of certain applicants on civil service open competitive eligible lists.

Agriculture Industry Impact

It is not anticipated that the proposed new rule and amendments would have any agriculture industry impact. The proposed new rule and amendments governs placement of certain applicants on civil service open competitive eligible lists.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rule and amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendments pertains to placement of certain applicants on civil service open competitive eligible lists.

Housing Affordability Impact Analysis

Since the proposed new rule and amendments concern placement of certain applicants on civil service open competitive eligible lists, they would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed new rule and amendments concern placement of certain applicants on civil service open competitive eligible lists, they would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for professional level engineering promotional examinations under (b) below and public safety open competitive and promotional examinations under (c) below, may be authorized for the following reasons:

1. Error by the [Department of Personnel] **Civil Service Commission** or appointing authority;
2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
3. Documented serious illness or death in the candidate's immediate family;
4. Natural disaster;

5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; [and]

6. When required for certain persons returning from military service (see N.J.A.C. 4A:4-4.6A); and

[6.] **7. Other valid reasons.**

(b) For professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation; [or]

4. When required for certain persons returning from military service (see N.J.A.C. 4A:4-4.6A); or

[4.] **5. Error by the [Department of Personnel] Civil Service Commission** or appointing authority.

(c) For police, fire, correction officer, sheriff's officer, juvenile detention officer, and other public safety open competitive and promotional examinations, make-ups may be authorized only in cases of:

1. Death in the candidate's immediate family;

2. Error by the [Department of Personnel] **Civil Service Commission** or the appointing authority; [or]

3. When required for certain persons returning from military service (see N.J.A.C. 4A:4-4.6A); or

[3.] **4.** A catastrophic health condition or injury, which shall be defined as either:

- i. A life-threatening condition or combination of conditions; or
- ii. A period of disability required by the candidate's mental or physical health or the health of the candidate's fetus which requires the care of a physician who provides a medical verification of the need for the candidate's absence from work for 60 or more work days.

(d) [Employees] **Subject to applicable provisions in N.J.A.C. 4A:4-4.6A, employees** returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list, for prospective appointment only, based upon the score obtained, as if the examination had been taken when originally held, **except that in the case of certain persons returning from military service, applicable provisions of N.J.A.C. 4A:4-4.6A shall govern placement on an eligible list.**

(e) Employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination.

(f) [A] **Except as provided in N.J.A.C. 4A:4-4.6A, a candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in (a), (b), or (c) above, as applicable. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of one of the valid reasons set forth in (a), (b), or (c) above, as applicable, of which a candidate is aware upon receipt of the examination notice, except that the candidate shall follow the procedures set forth in N.J.A.C. 4A:4-4.6A, where applicable.**

(g) Make-up examinations will be administered to the extent possible under the same conditions as the original examination but, in the case of public safety examinations under (c) above, shall be different in content from the original examination.

(h) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the [Department of Personnel] **Civil Service Commission** or appointing authority, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(i) All candidates taking make-up examinations, except physical performance examination, shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination, or third parties, provided that:

1. In the case of open competitive and promotional public safety examinations referred to in (c) above, candidates shall sign an additional statement accepting the make-up examination as a substitute for the original examination, provided, however, that signing this statement shall not

preclude the candidate from challenging the validity of the make-up examination's items, the scoring of the make-up or the make-up test conditions. See N.J.A.C. 4A:4-6.3 and 6.4.

(j) In extraordinary circumstances, such as an examination that requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. In such cases, candidates will be so notified at least 45 days prior to the date of the examination. The only exceptions will be documented error on the part of the [Department of Personnel] **Civil Service Commission** or appointing authority, in which case a make-up may be granted if practicable, **or where N.J.A.C. 4A:4-4.6A applies in the case of certain persons returning from military service.**

4A:4-2.17 Application processing fees

(a) A \$25.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. Veterans shall be charged a processing fee of \$15.00 for each open competitive and promotional examination application, unless the examination falls under paragraphs (a)2 or 3 below.

2. The Civil Service Commission shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring, and administering the examination. Receipts derived from this application fee shall be appropriated to the Commission for use in developing, procuring, and administering law enforcement officer and firefighter examinations.

3. When announcements for an examination list more than one title area (such as police, sheriff, and corrections), a processing fee shall be charged for each title area selected by the applicant.

4. An application processing fee shall not be charged where the application is being filed for placement on a list in accordance with N.J.A.C. 4A:4-4.6A.

(b) The fee shall be paid by check or money order, made payable to NJCSC, and submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Civil Service Commission, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance--a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.

2. Work First New Jersey Act--a copy of the applicant's Families First card.

3. Supplemental Security Income--a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").

2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Civil Service Commission for fees refunded to applicants.

4A:4-3.6 Additions to eligible lists

(a) The [Commissioner] **Chairperson of the Civil Service Commission or designee** may add names to an eligible list at any time during the life of the list under the following circumstances:

1. A make-up examination has been given and a candidate has received a passing score;
2. To correct an error by the [Department of Personnel] **Civil Service Commission**;
3. To implement an appeal decision; [or]
4. Where a third party, such as a college or the Veterans Administration, has submitted documents to correct an administrative error[.]; **or**

5. To place an eligible on a list in accordance with N.J.A.C. 4A:4-4.6A.

(b) When the name of an eligible is added to an existing list to correct an error made by the [Department of Personnel, the Department] **Civil Service Commission, an appropriate representative of the Commission** shall determine the retroactive certification and/or appointment rights. When the name of an eligible is added to an existing list for any other reason, the [Commissioner] **Chairperson or designee** shall determine the effect of the action on

certifications and prior permanent appointments. See also N.J.A.C. 4A:4-1.4 for conditional regular appointments.

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.6A Certain persons returning from military service

(a) In accordance with P.L. 2012, c. 49, a member of the New Jersey National Guard or reserve component of the United States Armed Forces who is on an open competitive eligible list but is called to active Federal duty prior to the list's expiration date, and who does not return from active Federal duty until after the list's expiration, may apply for placement, within 12 months of expiration, on an active open competitive eligible list.

1. To be considered for placement on an active open competitive eligible list, the person shall:

- i. Complete an examination application;**
- ii. Meet the eligibility requirements provided in the examination announcement for the active list, notwithstanding that the applicant has not filed the application by the announced closing date; and**
- iii. Submit sufficient proof of active Federal duty. Submission by the individual of a completed Form DD214 shall be considered sufficient proof.**

2. The applicant shall not be required to pay the examination application processing fee set forth in N.J.A.C. 4A:4-2.17.

3. If the applicant fails to meet the eligibility criteria enumerated in (a)1 above, the applicant shall be disqualified from placement on an active eligible list. See N.J.A.C. 4A:4-6.2 and 6.3 for actions against disqualified persons and disqualification appeals.

(b) The active eligible list for which the applicant applies shall be for the same title and jurisdiction, and result from the same test mode, as the expired list, except that:

1. In the case of entry level law enforcement testing, the local jurisdiction, if any, need not be the same, due to the fact that such testing is announced on a Statewide basis and all eligibles are placed in a single pool from which certifications are issued. See (d) below for procedures to follow when the test mode is not the same.

(c) In placing the name of the applicant on an active eligible list:

1. Except as provided in (d) and (e) below, the applicant shall retain the final average earned on the test that resulted in the expired list; and

2. The applicant's name shall be added to the active list, for prospective appointment only, immediately following the disabled veterans and veterans, if any.

i. If the applicant is awarded veterans or disabled veterans status in accordance with N.J.A.C. 4A:5-1.1 prior to the promulgation of the active list, the applicant's name shall be placed among the veterans or disabled veterans on the list, as appropriate, based on the applicant's retained final average.

(d) If the active list has not resulted from the same test mode, the test mode for both the expired list and the active list shall be reconciled in the best interest of the applicant as provided in (d)2 below.

1. There are five broad categories, or modes, of competitive examination: multiple choice; written (short answer or essay); oral communication; performance of endurance, skill, or aptitude (for example, physical performance, typing, in-basket exercise); and unassembled (an evaluation of education, training, and/or experience).

2. Accordingly, as an example, if the test mode used to generate the expired list was a multiple choice and the test mode for the active list was a performance of endurance, skill or aptitude, the test modes shall be considered different and the applicant shall be scheduled as soon as possible for a make-up examination utilizing the same test mode as that used for the active list.

i. The applicant's final average earned on the make-up examination shall apply to the active list. The applicant's name shall be added to the active list in accordance with the provisions of (c)2 above.

ii. If the applicant fails the make-up examination, the applicant's name shall not be placed on the active list and the applicant shall not have a further opportunity to be placed on an active list within one year of filing the application.

(e) If both the expired list and the active list have resulted from an unassembled examination, the education, training, and/or experience on the application filed by the applicant in accordance with (a)1 above shall be evaluated based on the announced closing date for the test that resulted in the active list.

1. Where the unassembled examination method for both tests is ranked, the higher of the two final averages earned by the applicant shall apply to the active list. Where the unassembled examination method for both tests is unranked, the applicant shall receive the same score as all other eligibles on the active list.

2. Where the unassembled examination method is different (for example, the first being unranked and the second ranked), the applicant shall receive the final average in accordance with the unassembled examination method resulting in the active list, and this final average shall apply to the active list.

3. The applicant's name shall be added to the active list in accordance with the provisions of (c)2 above.

(f) An applicant may request the placement of his or her name on a maximum of two active open competitive eligible lists in accordance with this section, subject to (a) through (e) above and the following requirements:

1. If the first active list on which the applicant's name is placed under this section expires in less than 12 months following the filing of an application, and the applicant so requests in writing, he or she shall be placed on a second active list, so long as placement on the second active list can be effected within 12 months following the filing by the applicant of an examination application upon returning from active Federal duty.

2. No examination application processing fee shall be charged for an applicant's written request to be placed on a second active list.

3. If the applicant's name cannot be placed on a second active list within 12 months following the filing of the application, the applicant's name shall not be placed on a second active list.

4A:4-6.1 Examination and selection disqualification

(a) A person may be denied examination eligibility or appointment when he or she:

- 1. Lacks the job requirements;**
- 2. Is ineligible, by law, for employment in the title;**
- 3. Is physically or psychologically unfit to perform effectively the duties of the title.**

However, an injury incurred in the armed forces shall not be considered a disqualification unless

the [Commissioner] **Chairperson of the Civil Service Commission or designee** considers the condition incapacitating;

4. Has failed to pass examination procedures;

5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;

6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;

7. Has a prior employment history which relates adversely to the title; [or]

8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or

9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

(d) See N.J.A.C. 4A:4-4.6A for disqualifications of certain persons returning from military service.

4A:4-6.2 Actions against disqualified persons

(a) A disqualification under N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;

2. Refusal to test an individual;
3. Refusal to place a candidate's name on an eligible list;
4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

(b) See N.J.A.C. 4A:4-4.6A for disqualifications of certain persons returning from military service.

[(b)] (c) Major disciplinary procedures shall be applicable to removal of an employee who is permanent or serving in a working test period.